

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 56th LEGISLATURE - REGULAR SESSION

COMMITTEE ON NATURAL RESOURCES

Call to Order: By **CHAIRMAN BILL TASH**, on February 3, 1999 at 3:10 P.M., in Room 437 Capitol.

ROLL CALL

Members Present:

Rep. Bill Tash, Chairman (R)
Rep. Hal Harper, Vice Chairman (D)
Rep. Cindy Younkin, Vice Chairman (R)
Rep. Rod Bitney (R)
Rep. Aubyn A. Curtiss (R)
Rep. Rick Dale (R)
Rep. Bill Eggers (D)
Rep. Ron Erickson (D)
Rep. David Ewer (D)
Rep. Gail Gutsche (D)
Rep. Joan Hurdle (D)
Rep. Dan McGee (R)
Rep. Douglas Mood (R)
Rep. Karl Ohs (R)
Rep. Scott J. Orr (R)
Rep. Bob Story (R)
Rep. Jay Stovall (R)
Rep. Carley Tuss (D)
Rep. Doug Wagner (R)

Members Excused: Rep. Bob Raney (D)

Members Absent: None.

Staff Present: Deb Thompson, Committee Secretary
Kathleen Williams, Legislative Branch

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: HB 423, 2/6/1999
Executive Action: HB 298, HB 331, HB 300, HB 142

HEARING ON HOUSE BILL 423

Sponsor: Rep. Cliff Trexler, HD 59, presented the bill.

Proponents: Dennis Applebury distributed a letter in support of the bill. **EXHIBIT(nah27a01)** The bill would clarify how parcels of land outside a platted subdivision may move boundary lines. The bill would also allow people to make family transfers of land within platted subdivisions. The third item allows exchanges of a lot in a subdivision with one outside of a subdivision. He pointed out the law discriminates for those people who own land within subdivisions. People who own 10 acre orchard tracts that were platted in the early 1900's are not allowed to do family transfers but a person who owns a tract right next to that does qualify for a family transfer.

Opponents: Mike Cavahah, Ravalli County Planning Board, spoke against the bill. **EXHIBIT(nah27a02)** Board members believe the bill would put the county in a bad position in determining whether an individual is proposing a family transfer or evading the subdivision review process. **{Tape : 1; Side : A; Approx. Time Counter : 13.6 - 18.5}**

Robert Rasmussen, Lewis and Clark County Planner, spoke about concerns and the purposes of the subdivision and platting act. He pointed out the exemption would be contrary to the purposes of the act. **{Tape : 1; Side : A; Approx. Time Counter : 22}**

Jane Jelinsky, representing the Montana Association of Counties, spoke against the bill. She pointed out people thought of subdivision review and rules as a property rights issue but the rules protect property rights. Buyers rely on assurances.

Lee Arbuckle, representing Montana League of Woman Voters, spoke against the bill. **EXHIBIT(nah27a03)** The League of Women Voters support land use planning that reflect conservation and land use planning for orderly growth.

Janet Ellis, Montana Audubon, pointed out the bill would allow for mischief. **EXHIBIT(nah27a04)**

Linda Stoll, representing Montana Association of Planners, spoke in opposition to the bill. **EXHIBIT(nah27a05)** She said the association promotes a planning process and policy that promotes smart growth, growth that creates liveable, sustainable and economically viable communities. She felt HB 423 would create a loophole in the Subdivision and Platting Act. It would allow lots within a platted and filed subdivision to be re-subdivided or redesigned by means of certificates of survey rather than by plat amendment and thereby

create two or more conflicting sets of boundary records for the same parcels of land. **{Tape : 1; Side : A; Approx. Time Counter : 34.2}**

Ann Hedges, Montana Environmental Information Center, opposed the bill. She pointed out a 10 acre parcel was not agricultural land. The EQC has addressed ways to prevent abuse of family transfers.

Marga Lincoln, AERO, spoke against the bill. She said the bill was not in the public interest and would be damaging to properties in Ravalli County. She discussed the rural fire department problems with roads. These types of parcels would be exempt from subdivision review. The bill would add many infrastructure needs.
EXHIBIT (nah27a06)

Dustin Doane, representing the Montana Wildlife Federation, pointed out the bill would make it easier to encroach on riparian zones. Open spaces continue to shrink. The threat today is the loss of habitat. **{Tape : 1; Side : A; Approx. Time Counter : 39.2}**

Questions from Committee Members and Responses: Rep. McGee asked Mike Cavanah about the definition of subdivision. McGee referred to the code book and Cavanah read it to the committee. Rep. McGee pointed out if a person had 159 acre tract they would not be able to convey a 5 or 10 acre parcel to a son or daughter because it was under the 160 acre rule without this bill passing the way the statutes are written now. Rep. McGee noted the third paragraph from the Ravalli County letter, exhibit 2, said the bill went far beyond the family transfer exemption and then talks about providing those involved in agriculture the opportunity to keep immediate family members on the farm. He requested background that substantiated the intent that the original family transfer was for agricultural uses only.

Closing by Sponsor: Rep. Trexler noted a simple bill has trampled on everything, ruined the economy, done away with all the wildlife and motherhood was the only thing he missed. He said he heard this was a way around the family transfer. The bill in 1973 did not say agriculture was the only group that could give land to their kids. He pointed out many of these bills are the issue of control by a bureaucracy.

EXECUTIVE ACTION ON HOUSE BILL 298

Chairman Tash reminded the committee HB 298 dealt with water supply, cisterns and potable water.

Rep. Younkin **MOVED DO PASS**. Rep. Ewer commented the bill appeared to approve selling property to an unsuspecting person who has to haul water. Rep. Bitney replied that a buyer has rights and real estate practitioners must give full disclosure.
{Tape : 1; Side : A; Approx. Time Counter : 55.1}

Rep. Hurdle said the bill was based on an incident that happened to the sponsor's father because of a required cistern. Director Siminich noted the department does not require cisterns. They look at the tract to determine if the quantity and quality of the water supply is adequate, if not it is disapproved. The proposal could then be modified and could include the use of a cistern. He pointed out the problem for individuals who found out at a later time that their water supply was not adequate and would require a substantial cost to locate an alternate water supply.

Rep. Hurdle **MOVED TO TABLE HB 298**. The motion **PASSED** 13-7.
{Tape : 1; Side : B}

EXECUTIVE ACTION ON HOUSE BILL 331

Rep. Curtiss **MOVED DO PASS**. Rep. McGee discussed the terms "institutional control" or "remedy". Rep. Curtiss pointed out the hearing had no opponents. The bill was practical and a cost effective way to protect the environment.

The question was called. The motion **PASSED** 19-1 with Rep. Wagner voting no.

EXECUTIVE ACTION ON HOUSE BILL 300

Rep. Ohs **MOVED DO PASS HB 300**. Rep. Younkin said 60 working days was too long when considering weekends and holidays. Rep. Ohs replied this was a reasonable time. Small counties have small staff with lots of subdivision work.

The question was called. The motion **PASSED** with 4 no votes by Reps. Younkin, McGee, Orr and Wagner.

EXECUTIVE ACTION ON HOUSE BILL 142

Rep. Curtis **MOVED DO PASS HB 142**. **{Tape : 1; Side : B; Approx. Time Counter : 17.7} EXHIBIT(nah27a07), EXHIBIT(nah27a08)**

Rep. Ewer explained if the public thinks an EIS is not a good job it could be litigated. The bill would say the scoping ends with

the department, you can't expand the scope of the environmental assessment in district court.

Rep. Curtiss pointed out the issue needs finality. The Department of State Lands has a fiduciary responsibility where the money goes to education and the university system. It has become obvious that nuisance issues have been raised. She referred to the sheet from the department that lists those cases (see Exhibit 7). **{Tape : 1; Side : B; Approx. Time Counter : 21.9}**

Rep. Curtiss MOVED the amendment **EXHIBIT (nah27a09)**.

Rep. Younkin supported the amendment because it added definitiveness and gives guidance. She stated, if it is a problem it will be addressed and if it is fluff it won't be addressed. Chairman Tash pointed out the amendments clear up confusion of how MEPA is applied and how extensively.

Rep. Mood noted this would leave room within MEPA for circumstances such as the Sheep versus Sheep case.

Rep. Eggers spoke about the amendment where it may bar access to the courts. He read lines from the Constitution. He asked the committee to think about how the Constitution prohibits barring people from the court. He noted if a person brings up a latent discovery, an after the fact discovery, they should have access to the courts and the courts should exercise its discretion to determine whether the information is material, substantive and whether it is deserving of a remand back to the agency for consideration and an opportunity to modify.

Chairman Tash said this was a good point and should be addressed. Todd Everts suggested a threshold decision be made up front by the district court regarding the facts being material or substantive.

Rep. Story said it seems that the complainant has access to the court system. They come in with information they don't think has been considered by the department, they take it to the court and the court remands it back to the department. It stays in the loop until most of it gets solved.

Rep. Eggers said the court is given the discretion to weigh the evidence, make determinations and either make referrals or deny referrals or consider issues that are substantive. If a hearing is not allowed, an appeal can be made. Everyone should get their rights preserved and not cut the court off if someone needs it.

Rep. Wagner supported the amendment. People need constitutional rights protected by addressing these facts up front so they don't come back over and over with new issues. He noted the federal government had addressed this issue and a parallel was needed in state statute.

Rep. Curtiss **MOVED A SUBSTITUTE MOTION** to clear this up. She pointed out the 7th line from the bottom to say "the district court shall review the agencies findings..." **{Tape : 1; Side : B; Approx. Time Counter : 39.3 - 42.5}** Rep. Story said once this change was made in the last sentence it was probably not relevant. The "only" is the important word in that sentence where the district court will only review what is in the administrative record. He said it was his understanding that once you got through the circular process of review, the court had a complete record. They used what was in the record to make the administrative decision. The amendment would keep the court on track in reviewing what happened in the administrative process not creating a whole new process.

Rep. Eggers said he thought this was trying to stop litigious people who are raising frivolous issues and keep the case rolling and open so it does not run up the expense of the courts and the personnel of the administration. The language in the original section said "a court may not set aside an agencies decision unless it finds there is clear and convincing evidence that a decision was arbitrary or capricious or not in compliance with law". He pointed out the court is going to do that anyhow, since that is the standard that is used to determine that the case is closed. The court won't allow the case to remain open because there is a phrase called "judicial economy" and if people just keep raising issues that are frivolous, most of those issues will be reviewed and resolved by the re-review process by sending it back to the agency. Once that is done, the district court will review the agency's findings to determine whether they are supported by substantial and credible evidence. **{Tape : 1; Side : B; Approx. Time Counter : 44.4}**

The question was called on the substitute motion. The motion **PASSED** 17-3 with Reps. Dale, Wagner and Hurdle voting no.

Rep. Hurdle pointed out the objections by the Land Board members, there hadn't been that many court cases and MEPA has been significant. She was concerned about exemptions from MEPA. Harley Harris from the Attorney General's Office said the concern was with section 2. The concern focuses on the exemption of certain department functions from MEPA compliance.

Rep. Story said it was his understanding that the board would not have to invoke MEPA on a few minor things, but they could do it if they want.

Rep. Mood noted the trustees of the Land Board's opposition and felt it was bizarre that they would testify against a bill that would make it easier to manage the trust to do what it was set up for, and that is to generate money for the schools of the state. He read an article from the *U.S. News and World Report* published March 30, 1997, where John Leo discussed the explosion of litigation in this country. **{Tape : 1; Side : B; Approx. Time Counter : 52}**

Rep. Erickson pointed out that citizens have a say and departments should make wise decisions. He said of all the cases, half the time the citizens were right. We should not be taking away citizen involvement.

Rep. Harper said MEPA was the bill that established the Environmental Quality Council and the bill that looks at the ramifications for the environment for all of the actions this state undertakes. The bill would put agencies ahead of citizens.

Rep. Wagner reminded the committee that the state was 50th in income and jobs nationwide. This bill was an opportunity to remedy some of that by speeding up the operations of timber sales, permitting mining, and so on. People have a right to object, bring those issues and concerns forward, up front and we will discuss them and deal with them and go on, but don't continue to come back and plug the system.

The question was called. The motion **PASSED** 12 to 8 on a roll call vote.

ADJOURNMENT

Adjournment: 5:10 P.M.

REP. BILL TASH, Chairman

DEB THOMPSON, Secretary

BT/DT

EXHIBIT (nah27aad)